

civil court. He also took the view that unless there was proof of serious injury or imminent danger to the general public interest it was not proper to invoke the aid of this Chapter. I agree with those views but would add that in my opinion the overriding consideration must always be the public interest.

I have therefore come to the conclusion that this is not a fit matter for me to interfere.

Order accordingly.

Solicitors:—*Tan, Rajah & Cheah.*

SEOW PENG KUAN v. REGINA

[A.Cr.J. (Winslow J.) June 19, 1963]

[Singapore — Magistrate's Appeal No. 42 of 1963]

Customs and Excise—Possession of dutiable samsu—Customs Ordinance, 1960, s.113—Accused leaning against car containing tins of samsu—Finger-prints of accused on rear window of same car—Whether possession proved.

Possession of dutiable samsu under section 113 of the Customs Ordinance is not proved by evidence showing that the accused was leaning against the car in which the dutiable samsu was found and that his finger-prints were on the rear window of the car.

MAGISTRATE'S CRIMINAL APPEAL.

S. H. D. Elias for the appellant.

Donald Yeo for the Crown.

Winslow J. (delivering oral judgment): In this appeal against his conviction on a charge of possessing dutiable samsu under section 113 of the Customs Ordinance (No. 44 of 1960) the main evidence against the appellant is that he was leaning against the car which was later found to contain certain tins of samsu. His finger prints were found on the rear window of the car. Even giving the prosecution every benefit with regard to the finding of these prints, to wit, that they were impressed on that window prior to the arrival of the police and not after he was handcuffed and placed inside the car, there is very little either in his circumstance or otherwise to connect the appellant with the samsu which was found in the boot of the car and the other package found on the front seat. The circumstances are extremely suspicious but I do not think possession of the samsu has been proved as it should have been proved. In the circumstances the appeal is allowed and the conviction quashed.

Appeal allowed.

Solicitors:—*Elias Bros.*

A YAT YUEN HONG CO. LTD. v. SHERIDAN-LEA & ANOR.

[C.A. (Wee Chong Jin C.J., Tan Ah Tah and Buttrose JJ.)

June 24, 1963]

[Singapore — Civil Appeal No. 2 of 1963]

Tort—Escape of filled earth—Damage caused by—“Non-natural use” of land—Rule in Rylands v. Fletcher—Whether applicable.

The appellants, land developers, were at the material dates developing their land which was adjacent to and on a higher level than the respondents' nursery garden. The appellants had filled with earth the slope and this filled earth slipped during a heavy rain on the night of August 28, 1958, as a result of which part of the retaining wall collapsed on the respondents' land and destroyed their plants, fencing, bower, stands and other equipment. In the Court below Chua J. held that the defendants were liable because in his view “to pile loose earth on a steep slope so that more flat land would be available for the house is ‘non-natural use’ of the land and the defendants having placed an artificial mass in a dangerous position are responsible for the consequences.” On appeal it was contended that the learned trial Judge was wrong in law in holding that the doctrine of *Rylands v. Fletcher* applied.

Held: to pile loose earth on a steep slope so that more flat land would be available is “non-natural use” of the land and, therefore in this case the appellants were liable under the rule in *Rylands v. Fletcher*.

Cases referred to:—

- (1) *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330.
- (2) *Ilford Urban Council v. Beal* [1925] 1 K.B. 671.
- (3) *Nichols v. Marsland* (1875) L.R. 10 Ex. 255.
- (4) *St. Anne's Well Brewery Co. v. Roberts & Ors.* 44 T.L.R. 703.
- (5) *Wilkins v. Leighton* [1932] All E.R. Rep. 55.
- (6) *Attorney-General v. Cory Bros. & Co.* [1921] A.C. 521.
- (7) *Read v. Lyons* [1947] A.C. 156.
- (8) *Hale v. Jennings Bros.* [1938] 1 All E.R. 579.
- (9) *Jones v. The Festiniog Railway Co.* (1868) 3 Q.B. 733.
- (10) *Halsey v. Esso Petroleum Co. Ltd.* [1961] 1 W.L.R. 683.

COURT OF APPEAL.

L. A. J. Smith for the appellants.

J. E. Lloyd for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is an appeal from the judgment of Chua J. in favour of the plaintiffs' claim for damage to property which belonged to them as partners in the business of nursery gardeners carried on by them at No. 10 Binjai Park, Singapore. The damage was caused by the escape of filled earth from the defendants' land.

The defendants are a limited liability company and are land developers and were at the material dates developing their land which was adjacent to the land occupied by the plaintiffs. The defendants' land was on a higher level than the plaintiffs' land and there was a natural slope of approximately 30° down to the plaintiffs' land. The learned trial judge found that this natural slope was a steep slope which the defendants had filled with earth and that this filling had taken place before the defendants had erected a retaining wall 80 feet long between their land and the land occupied by the plaintiffs. The learned trial judge further found that this filled earth slipped during the heavy rains on the night of the 28th August 1958 and as a result part of the retaining wall collapsed on to the plaintiffs' land and destroyed the plaintiffs' plants, fencing, bower, stands and other equipment. He held that the defendants were liable because in his view "to pile loose earth on a steep slope so that more flat land would be available for the house is 'non-natural use' of the land and the defendants having placed an artificial mass in a dangerous position are responsible for the consequences". These findings of the learned trial judge are not disputed by the defendants but they contend that on these facts the learned trial judge was wrong in law in holding that the doctrine of *Rylands v. Fletcher*⁽¹⁾ applied.

Another ground of appeal is that the doctrine of *Rylands v. Fletcher* is not available to the first plaintiff who was a mere occupier with no proved proprietary interest in land. This ground of appeal can in my view be briefly disposed of. The statement of claim avers that both plaintiffs are carrying on in partnership the business of nursery gardeners and are and were at all material times in occupation of the land and premises situate at and known as No. 10 Binjai Park, Singapore and this averment is expressly admitted in the defence. The point now raised was never raised in the Court below and in all the circumstances I am of the opinion that the defendants are now precluded by the pleadings from doing so.

As regards the applicability of the doctrine of *Rylands v. Fletcher* the defendants base their contention on two grounds.

First it is contended that under the rule in *Rylands v. Fletcher* one condition which must be satisfied before liability attaches is that the use to which a defendant is putting his land is "a non-natural use". It is argued that it was a normal use and not a non-natural use of land to fill up sloping land with earth for the purpose of developing the land. Counsel for the defendants relies on the case of *Ilford Urban Council v. Beal*⁽²⁾ where Branson J. said:—

A "Farwell L.J. draws the distinction between the absolute duty owed to others by one who is making an abnormal use of land: *Nichols v. Marsland*⁽³⁾ and *Rylands v. Fletcher*, and that owed by those whose use of land is merely normal. There can be no question that in the present case the use of the land by erecting a retaining wall upon it is merely normal use, and the principle illustrated by such cases as *Nichols v. Marsland* and *Rylands v. Fletcher* can have no application to it."

B Another case relied on is *St. Anne's Well Brewery Co. v. Roberts & Ors.*⁽⁴⁾ where the views of Branson J. that the erection of a retaining wall on land was a normal use of land were approved by Scrutton L.J. (see page 705). The next case relied on is *Wilkins v. Leighton*⁽⁵⁾ where Luxmoore J. applying *St. Anne's Well Brewery Co. v. Roberts* held that where an owner in building a house on his land caused to collapse a retaining wall which separated the land on which the house was built from the adjacent land was not liable for the damage to the retaining wall on the ground that one of the most normal uses of land is to put buildings on it.

D In my opinion these three cases are distinguishable from the case before us. *Ilford's* case is a case of whether or not the erection of a retaining wall on land is a normal use of that land. *St. Anne's Well Brewery Co.* case is similarly a case of an owner of a property on which was a retaining wall which had been erected centuries ago by their predecessors in title and it decided that the use of this retaining wall by the owner was one of the ordinary ways in which property is used. Similarly *Wilkins v. Leighton* is a case where it was decided that to erect a building on land is one of the most normal uses of land.

F In the present case the learned trial judge came to the conclusion that to pile loose earth on a steep slope so that more flat land would be available is "non-natural use" of the land.

G According to one witness there had been a fill of 5 feet overall covering an area of approximately 80 feet and according to another witness about 100 cubic yards of earth were placed at the top of the steep slope. There is also evidence that 1 cubic yard of earth weighs approximately 990 lbs. so that the total quantity of filled earth placed on the slope was approximately 44½ tons.

H In my opinion the learned trial judge was entitled on the evidence and on the facts as found by him to come to that conclusion having regard to the case of *Attorney-General v. Cory Bros. & Co.*⁽⁶⁾ and the passage in the opinion of Lord Porter in *Read v. Lyons*⁽⁷⁾ at 176 which was quoted by the learned trial judge and which reads as follows:—

I "For the present I need only say that each seems to be a question of fact subject to a ruling of the judge as to whether the particular object can be dangerous or

the particular use can be non-natural, and in deciding this question I think that all the circumstances of the time and place and practice of mankind must be taken into consideration so that what might be regarded as dangerous or non-natural may vary according to those circumstances."

In *Attorney-General v. Cory Bros. & Co.* the trial judge found that the defendant company which had tipped a vast mass of colliery spoil on the side of a hill thereby causing a landslide were liable under the principle of *Rylands v. Fletcher* and on the ground of negligence. This decision was eventually affirmed by the House of Lords where three of the five Law Lords specifically upheld the trial judge's judgment that the company were liable under the *Rylands v. Fletcher* principle as well as on the ground of negligence.

I turn now to deal with the second ground put forward by counsel for the defendants. He contends that the doctrine of *Rylands v. Fletcher* applies only where the claim is for damage to some proprietary interest in land and that it does not apply to damage to personal property.

Counsel relies on passages in the opinion of the Law Lords in *Read v. Lyons* in support of this proposition but I can find nothing in those passages which in my opinion lay down such a proposition of law. One of those passages may support a proposition that the doctrine of *Rylands v. Fletcher* has nothing to do with personal injuries using that word in the strictly limited sense of bodily injuries but even that latter proposition according to *Salmond* on Torts 13th edition at page 578 cannot be upheld both in principle and on authority. Indeed in *Hale v. Jennings Bros.*⁽⁸⁾ the Court of Appeal in England held the defendants liable on the principle of *Rylands v. Fletcher* where a chair, with its occupant, became detached from a chair-o-plane and seriously injured the plaintiff who was a tenant of a stand on a fair-ground belonging to the defendants who also owned and operated the chair-o-plane.

As regards damage to chattels there is clear authority that an occupier can recover for damage to his chattels under the rule in *Rylands v. Fletcher*. As early as 1868 Blackburn J. who first pronounced the doctrine now known as the rule in *Rylands v. Fletcher*, held the rule applicable to a case where sparks from a railway engine belonging to a railway company escaped and caused damage to a haystack belonging to the plaintiff in *Jones v. The Festiniog Railway Co.*⁽⁹⁾ Almost a century later Veale J. in *Halsey v. Esso Petroleum Co. Ltd.*⁽¹⁰⁾ at page 692 said this:

"This doctrine of *Rylands v. Fletcher*, whether or not it is strictly based on nuisance, applies to the sulphuric acid or sulphate in smuts or oily drops wherever they

alight: on washing hung out to dry, as well as on to a motor-car in the street."

Later on in this judgment he said at page 693:

"I have no doubt at all that the defendants have been the cause of the emission into the atmosphere of noxious smuts which have caused damage to the plaintiff's washing and to his motor-car. The smuts are noxious acid smuts, and it does not matter whether they contain sulphate or sulphuric acid. For this damage the defendants in my judgment are liable, both as for a nuisance and under *Rylands v. Fletcher*."

I accordingly am of the opinion that the learned trial judge was right in holding that the defendants were liable under the rule in *Rylands v. Fletcher* and I would therefore dismiss this appeal with costs.

Tan Ah Tah and Buttrose JJ. concurred.

Appeal dismissed.

Solicitors:—L. A. J. Smith; Drew & Napier.

T.T. RAJAH v. REGINA

[O.Cr.J. (Wee Chong Jin C.J.) June 26, 1963]

[Singapore — Criminal Motion No. 11 of 1963]

Criminal Procedure—Transfer of case—Trial fixed for hearing in 1st Criminal District Court—Application for transfer of case to High Court for trial—Criminal Procedure Code (Cap. 132), ss.176 & 177—Whether transfer to be preceded by preliminary inquiry or a direct transfer without preliminary inquiry for summary trial—Jurisdiction of the High Court in criminal matters—Courts Ordinance (Cap. 2), s.16(1)(d).

Criminal Law—Abetment of persons in the commission of offences under Penal Code, ss.124, 143 and 147—Whether the Criminal District Courts have jurisdiction to try offence under s.124, Penal Code—Criminal Procedure Code (Cap. 132), ss.8 & 10.

The applicant was charged on three substantive charges of having abetted persons in the commission of offences under sections 124, 143 and 147 of the Penal Code and the trial was fixed for hearing before the 1st Criminal District Judge. Before the trial came on, he applied to the High Court under sections 176 and 177 of the Criminal Procedure Code that his case be transferred from the 1st Criminal District Court to the High Court for trial. His grounds of application included, *inter alia*, that a fair and impartial trial could not be had in any of the Criminal District Courts. The Crown agreed, without going into the merits, not to oppose an order of transfer on this particular ground.

The Crown contended that the order of transfer could only be made under section 176 of the Criminal Procedure Code and where an order is made under this section, the High Court can take cognizance of it and try it in a summary way, without a preliminary inquiry, under its original criminal jurisdiction as conferred by section 16(1)(d) of the Courts Ordinance.

The applicant contended that because the Criminal District Courts have no jurisdiction to try a charge under section 124 of the Penal Code, an order for transfer in so far as it pertained to a charge under section 124, must be made under section 177 of the Criminal Procedure Code and not under section 176; that a transfer